

Message Text

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ORIGIN NEA-10

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FM SECSTATE WASHDC

TO AMEMBASSY NEW DELHI

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E.O. 11652:N/A

TAGS:USINJC, ETRA, IN

SUBJECT: ARBITRATION DISPUTE

REF: NEW DELHI 13596

1. WE ARE PASSING SUBSTANCE OF STATUS REPORT CONTAINED REF-TEL TO BRIDGELAND. WOULD APPRECIATE EMBASSY KEEPING US ABREAST OF DEVELOPMENTS ON CURRENT BASIS. AGREE WE SHOULD CONTINUE OUR EFFORTS TO SETTLE THIS CASE AS QUICKLY AS POSSIBLE, BUT WOULD PREFER WE FOCUS OUR LEVERAGE ON GSP QUESTION RATHER THAN POSSIBLE COOPERATION IN FERTILIZER AREAS.

2. WHILE PRINCIPALS BRIEFED TO DISCUSS IDI PROBLEM WITH M.G. KAUL DURING JOINT COMMISSION MEETING LAST WEEK, WE UNDERSTAND SUBJECT IN FACT NOT DISCUSSED. THEREFORE, WE INTEND TO CALL IN RAMAKRISHNA NEXT WEEK AND USE FOLLOWING APPROACH:

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A. WE HOPE GOI WILL MAKE EVERY EFFORT TO SETTLE THIS CASE ON BASIS OF COMPROMISE AND QUICKLY. AMOUNT IN QUESTION IS INSIGNIFICANT PARTICULARLY WHEN COMPARED TO POTENTIALLY NEGATIVE CONSEQUENCES OF FAILURE TO RESOLVE DISPUTE.

B. IDI LEGAL COUNSEL HAS TWICE OFFERED TO NEGOTIATE SETTLEMENT IN LAST SEVERAL MONTHS. BOTH OFFERS HAVE BEEN TURNED DOWN BY FCI.

C. TRADE BILL OF 1974 CONTAINS PROVISION WHICH WOULD BAR RECEIPT OF GSP BY ANY COUNTRY THAT SHOWED BAD FAITH IN PREVENTING PAYMENT OF INTERNATIONAL ARBITRAL AWARDS TO AMERICAN CITIZENS AND COMPANIES. THOUGH DEPARTMENT HAS CONCLUDED AS LEGAL MATTER THAT CURRENTLY AVAILABLE INFORMATION DOES NOT ESTABLISH BAD FAITH ON PART OF GOI TO DATE, DEPARTMENT'S CONCLUSION CONCERNING INAPPLICABILITY OF TRADE ACT RESTRICTIONS ARE NOT STATIC AND MUST TAKE ACCOUNT OF MANNER IN WHICH IDI CASE IS HANDLED.

D. WE HAVE ADVISED INTERESTED CONGRESSIONAL PARTIES THAT FCI WAS NOT ACTING AS GOVERNMENT ENTITY IN THIS CASE BUT AS COMMERCIAL ENTERPRISE. NOW ACTIONS OF FCI SUGGEST POSSIBILITY THAT THEY HAVE NOT BEEN ACTING IN NORMAL COMMERCIAL MANNER BUT RATHER SEEKING LITIGATION ROUTE IN ORDER TO AVOID FACING UNPLEASANT QUESTIONS IN PARLIAMENT. SHOULD THIS PROVE TO BE THE CASE, THERE WOULD BE STRONGER BASIS FOR CASE MADE BY CONGRESSIONAL CRITICS.

E. WE HOPE THIS IS NOT SO AND IN INTEREST OF IMPROVED INDO-U.S. ECONOMIC RELATIONS WE WOULD LIKE THIS PROBLEM SOLVED AS SOON AS POSSIBLE. AMOUNT OF MONEY INVOLVED IS NEGLIGIBLE TO FCI, BUT NOT TO SMALL AMERICAN CONCERN.

3. RE PARA 4 OF REFTTEL, DEPARTMENT DOES NOT AGREE THAT WE SHOULD MAKE SETTLEMENT OF THE IDI CASE A CONDITION FOR COOPERATION IN FERTILIZER, ESPECIALLY WITH REGARD TO JOINT COMMISSION-SPONSORED COOPERATION. THE INK IS HARDLY DRY ON AGREEMENT REFERRING TO POSSIBLE COOPERATION IN WIDE RANGE OF FIELDS. PRACTICAL RISK OF LOSING GSP SHOULD BE SUFFICIENT TO GET GOI TO SERIOUSLY CONSIDER COMPROMISE SETTLEMENT LIMITED OFFICIAL USE

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OF THIS RELATIVELY MINOR CLAIM. WE THINK THIS BETTER WAY TO MOVE AHEAD RATHER THAN THREATEN TO WITHDRAW FROM JOINT COMMISSION COOPERATION BECAUSE IDI HAS A PROBLEM IN INDIA. INGERSOLL

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